

**ALASKA FOREST ASSOCIATION
111 STEDMAN #200
KETCHIKAN, AK 99901
907-225-6114**

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NEPA Draft Report Comments
c/o NEPA Task Force
Committee on Resources
1324 Longworth House Office Building
Washington, DC 20510

Reference: NEPA Draft Report Initial Findings and Draft Recommendations December 21, 2005

The Alaska Forest Association has the following comments regarding your recommendations:

Recommendation 1.1: Amend NEPA to define “major federal action.” NEPA would be enhanced to create a new definition of “major federal action” that would only include new and continuing projects that would require substantial planning, time, resources, or expenditures.

Comment:

This makes sense for timber sales. The current EIS process costs millions of dollars for timber sales that are sold for only a few hundred thousand dollars. Practically every timber sale in a region has the same environmental impacts; the trees are harvested and the trees grow back. The temporary effect on wildlife habitat, watershed management, recreation opportunities, etc are well known. There is no need to treat each EIS as though it is analyzing a new activity with unknown impacts.

Recommendation 1.2: Amend NEPA to add mandatory timelines for the completion of NEPA documents. A provision would be added to NEPA that would limit to 18 months the time for completing an Environmental Impact Statement (EIS). The time to complete an EA will be capped at 9 months. Analyses not concluded by these timeframes will be considered completed. There will obviously be situations where the timeframes cannot be met, but those should be the exception and not the rule. Before the time expires, an agency would have to receive a written determination from CEQ that the timeframes will not be met. In this determination, CEQ may extend the time to complete the documents, but not longer than 6 and 3 months respectively.

Comment:

Great idea. Hard targets are the only way to insure a bureaucracy acts in a timely manner. In Alaska, the Forest Service frequently takes five to seven years to complete a small timber sale EIS. This drives the cost very high and delays the timber sale program. The latter effect is particularly harmful because the agency has monopoly power over the timber supply in this region.

Recommendation 1.3: Amend NEPA to create unambiguous criteria for the use of Categorical Exclusions (CE), Environmental Assessments (EA) and Environmental Impact Statements (EIS). In order to encourage the appropriate use of CEs and EAs the statute would be amended to provide a clear differentiation between the requirements for EA's and EIS's. For example, in order to promote the use of the correct process, NEPA will be amended to state that temporary activities or other activities where the environmental impacts are clearly minimal are to be evaluated under a CE unless the agency has compelling evidence to utilize another process.

Comment:

This is also a good idea. There are thousands of acres of wind-thrown and bug-killed timber rotting away in Alaska instead of being salvaged because of the delays from the NEPA process.

Recommendation 1.4: Amend NEPA to address supplemental NEPA documents. A provision would be added to NEPA to codify criteria for the use of supplemental NEPA documentation. This provision would limit the supplemental documentation unless there is a showing that: 1) an agency has made substantial changes in the proposed actions that are relevant to environmental concerns; and 2) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. This language is taken from 40 CFR 1502.9(c)(1)(i) and (ii).

Comment:

This idea complements the hard targets in recommendation 1.2.

Recommendation 2.1: Direct CEQ to prepare regulations giving weight to localized comments. When evaluating the environmental impacts of a particular major federal action, the issues and concerns raised by local interests should be weighted more than comments from outside groups and individuals who are not directly affected by that proposal.

Recommendation 2.2: Amend NEPA to codify the EIS page limits set forth in 40 CFR 1502.7. A provision would be added to NEPA to codify the concept that an EIS shall normally be less than 150 pages with a maximum of 300 pages for complex projects.

Comment:

Another good idea. There is no way the small communities in Alaska can compete with the multi-million dollar environmental activists web-site generated comments. Well meaning people around the country are presented disinformation and consequently make poorly informed decisions. Further, it is difficult for even local people to thoroughly read and comment on the hundreds and hundreds of pages of multiple NEPA documents each year.

Recommendation 3.1: Amend NEPA to grant tribal, state and local stakeholders cooperating agency status. NEPA would be enhanced to require that any tribal, state, local, or other political subdivision that requests cooperating agency status will have that request granted, barring clear and convincing evidence that the request should be denied. Such status would neither enlarge nor diminish the decision making authority for either federal or non-federal entities. The definition would include the term “political subdivisions” to capture the large number of political subdivisions that provide vital services to the public but are generally ignored in the planning for NEPA.

Comment:

This change will help prevent personal biases by transient federal employees who move into a region for a few years and then move on. Too often we see misinformation in the NEPA documents that would not be there if the NEPA preparers understood the region better.

Recommendation 3.2: Direct CEQ to prepare regulations that allow existing state environmental review process to satisfy NEPA requirements. CEQ would be directed to prepare regulations that would, in cases where state environmental reviews are functionally equivalent to NEPA requirements, allow these requirements to satisfy commensurate NEPA requirements.

Comment:

This will result in a tremendous savings of time and money. Most of the large, costly NEPA documents include cut-and-paste chapters and analysis that are repeated endlessly.

Recommendation 4.1: Amend NEPA to create a citizen suit provision. In order to address the multitude of issues associated NEPA litigation in an orderly manner the statute would be amended to create a citizen suit provision. This provision would clarify the standards and procedures for judicial review of NEPA actions. If implemented, the citizen suit provision would:

- Require appellants to demonstrate that the evaluation was not conducted using the best available information and science.
- Clarify that parties must be involved throughout the process in order to have standing in an appeal.
- Prohibit a federal agency – or the Department of Justice acting on its behalf – to enter into lawsuit settlement agreements that forbid or severely limit activities for businesses that were not part of the initial lawsuit. Additionally, any lawsuit settlement discussions involving NEPA review between a plaintiff and defendant federal agency should include the business and individuals that are affected by the settlement is sustained.
- Establish clear guidelines on who has standing to challenge an agency decision. These guidelines should take into account factors such as the challenger’s relationship to the proposed federal action, the extent to which the challenger is directly impacted by the action, and whether the challenger was engaged in the NEPA process prior to filing the challenge;
- Establish a reasonable time period for filing the challenge. Challenges should be allowed to be filed within 180 days of notice of a final decision on the federal action;

Comment:

These are good ideas. We encourage you to add a requirement to post a substantial bond for any lawsuit that might delay a project that is vital to the economy for small communities. There should also be a strict time limit for the courts to make a final decision on any such lawsuit.

Recommendation 4.2: Amend NEPA to add a requirement that agencies “pre clear” projects. CEQ would become a clearinghouse for monitoring court decisions that affect procedural aspects of preparing NEPA documents. If a judicial proceeding or agency administrative decision mandates certain requirements, CEQ should be charged with the responsibility of analyzing its effects and advising appropriate federal agencies of its applicability.

Comment:

Adding a “process” risks adding delay. Bureaucrats love process. We try to offer suggestions that will result in faster decisions.

Recommendation 5.1: Amend NEPA to require that “reasonable alternatives” analyzed in NEPA documents be limited to those which are economically and technically feasible. A provision would be created to state that alternatives would not have to be considered unless it was supported by feasibility and engineering studies, and be capable of being implemented after taking into account: a) cost, b) existing technologies, and (c) socioeconomic consequences (e.g., loss of jobs and overall impact on a community).

Recommendation 5.2: Amend NEPA to clarify that the alternative analysis must include consideration of the environmental impact of not taking an action on any proposed project. A provision would be created that require an extensive discussion of the “no action alternative” as opposed the current directive in 40 CFR 1502.14 which suggests this alternative merely be included in the list of alternatives. An agency would be required to reject this alternative if on balance the impacts of not undertaking a project or decision would outweigh the impacts of executing the project or decision.

Comment:

These are good recommendations. Too often we see unworkable alternatives that are placed in a NEPA document simply to insure a “wide-range” of alternatives.

Recommendation 5.3: Direct CEQ to promulgate regulations to make mitigation proposals mandatory. CEQ would be directed to craft regulations that require agencies to include with any mitigation proposal a binding commitment to proceed with the mitigation. This guarantee would not be required if (1) the mitigation is made an integral part of the proposed action, (2) it is described in sufficient detail to permit reasonable assessment of future effectiveness, and (3) the agency formally commits to its implementation in the Record of Decision, and has dedicated sufficient resources to implement the mitigation. Where a private applicant is involved, the mitigation requirement should be made a legally enforceable condition of the license or permit.

Comment:

This is a terrible idea. Already we are seeing agencies try to extort costly, unnecessary mitigation projects.

Recommendation 6.1: Direct CEQ to promulgate regulations to encourage more consultation with stakeholders. As pointed out in testimony, the existence of a constructive dialogue among the stakeholders in the NEPA process and ensuring the validity of data or to acquire new information is crucial to an improved NEPA process. To that end, CEQ will draft regulations that require agencies to periodically consult in a formal sense with interested parties throughout the NEPA process.

Comment:

This will result in delay. Additionally, recommendations 2.1 and 3.1 make this recommendation unnecessary.

Recommendation 6.2: Amend NEPA to codify CEQ regulation 1501.5 regarding lead agencies. In regulation, the lead agency is given certain authorities. Legislation such as SAFE TEA-LU and the Energy Policy Act of 2005 have spoken to the need for lead agencies in specific instances such as transportation construction or natural gas pipelines. In order to reap the maximum benefit of lead agencies, their authorities should be applied “horizontally” to cover all cases. To accomplish this, appropriate elements of 40 CFR 1501.5 would be codified in statute. Additional concepts would be added such as charging the lead agency with the responsibility to develop a consolidated record for the NEPA reviews, EIS development, and other NEPA decisions. This codification would have to ensure consistency with lead agency provisions in other laws.

Comment:

We have no idea what this means. Can you explain it better?

Recommendation 7.1: Amend NEPA to create a “NEPA Ombudsman” within the Council on Environmental Quality. This recommendation would direct the Council on Environmental Quality to create a NEPA Ombudsman with decision making authority to resolve conflicts within the NEPA process. The purpose of this position would be to provide offset the pressures put on agencies by stakeholders and allow the agency to focus on consideration of environment impacts of the proposed action.

Recommendation 7.2: Direct CEQ to control NEPA related costs. In this provision CEQ would be charged with the obligation of assessing NEPA costs and bringing recommendations to Congress for some cost ceiling policies.

Comments:

Will recommendation 7.1 give CEQ authority to ignore local concerns? If so it is a bad idea. We don’t need additional agencies, we need to streamline processes.

Comments:

Recommendation 7.2 sounds like a good idea.

Recommendation 8.1: Amend NEPA to clarify how agencies would evaluate the effect of past actions for assessing cumulative impacts. A provision would be added to NEPA that would establish that an agency's assessment of existing environmental conditions will serve as the methodology to account for past actions.

Recommendation 8.2: Direct CEQ to promulgate regulations to make clear which types of future actions are appropriate for consideration under the cumulative impact analysis. CEQ would be instructed to prepare regulations that would modify the existing language in 40 CFR 1508.7 to focus analysis of future impacts on concrete proposed actions rather than actions that are "reasonably foreseeable."

Comments: These are good recommendations. They complement recommendation 5.1.

Recommendation 9.1: CEQ study of NEPA's interaction with other Federal environmental laws. Within 1 year of the publication of The Task Force final recommendations, the CEQ will be directed to conduct a study and report to the House Committee on Resources that:

- a. Evaluates how and whether NEPA and the body of environmental laws passed since its enactment interacts; and
- b. Determines the amount of duplication and overlap in the environmental evaluation process, and if so, how to eliminate or minimize this duplication

Comment:

Good idea. This may lead to the elimination of some redundancy.

Recommendation 9.2: CEQ Study of current Federal agency NEPA staffing issues. Within 1 year of the publication of The Task Force final recommendations, the CEQ (with necessary assistance and support from the Office of Management and Budget) will be directed to conduct a study and report to the House Committee on Resources that details the amount and experience of NEPA staff at key Federal agencies. The study will also recommend measures necessary to recruit and retain experienced staff.

Comment:

This would be better if the recommendation made it clear that the intent is to reduce NEPA cost and NEPA delays by insuring properly trained staff.

Recommendation 9.3: CEQ study of NEPA's interaction with state "mini-NEPAs" and similar laws. Within 1 year of the publication of The Task Force final recommendations, the CEQ will be directed to conduct a study and report to the House Committee on Resources that at a minimum:

- a. Evaluates how and whether NEPA and the body of state mini-NEPAs and similar environmental laws passed since NEPA's enactment interacts; and
- b. Determines the amount of duplication and overlap in the environmental evaluation process, and if so, how to eliminate or minimize this duplication

Comment:

This sounds worthwhile, but one year is too much time. If it is worth doing, it should be done within 90 or 180 days.

Thank you for the opportunity to comment.

Sincerely,

/s/ Owen J. Graham

Owen J. Graham
Executive Director